

REMARKS

Favorable reconsideration of the above-identified application, as presently amended, is respectfully requested. Claim 1 has been substantially amended to more clearly define the features of the presently claimed invention. Claims 1, 4-7, and 9 remain pending in the present application.

Claims 1, 4-7, and 9 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,358,356 to Romanek et al ("Romanek") in view of U.S. Patent No. 5,330,828 to Jacobsen, Jr. et al ("Jacobsen"), U.S. Patent No. 5,507,845 to Molnar et al ("Molnar"), and U.S. Patent No. 5,789,477 to Nosker et al ("Nosker").

Claim 1, as amended, includes the feature of an "erosion control blanket for controlling erosion and *blending in with a surrounding area* . . . wherein said synthetic filler material comprises a substantially post-consumer recycled polyester *having a color which tends to blend in with the surrounding area*" (emphasis added). For example, to blend in with grass and other surrounding landscape, the substantially post-consumer recycled polyester may have a green color. This is a significant aspect of the present invention which is not addressed or suggested by the prior art.

The Office Action recites that "Romanek discloses that the scrim and lightweight web can be colored (col. 3, lines 64-66). While Nosker et al. fails to specifically disclose the use of recycled green PET soda bottles, it would have been obvious to have made Nosker's soda bottles green, motivated by the desire to reduce the amount of green soda materials that are incinerated or sent to a landfill and by the desire to obtain a colored erosion control mat." However, the combination of Nosker and Romanek does not teach that the "synthetic filler material comprises a substantially post-consumer recycled polyester *having a color which tends to blend in with the*

surrounding area" as recited in claim 1. Instead, Nosker teaches a composite building material for which color and blending is of no significance. The phrase "Of course, milk, soda, and water bottles can also be useful" at col. 4, lines 54-55 of Nosker does not in any way suggest the use of "a substantially post-consumed recycled polyester *having a color which tends to blend in with the surrounding area*" as recited in claim 1. In fact, it infers that colors such as "red" would be equally useful.

Moreover, as noted by In re Zurko, 59 U.S.P.Q. 2d 1693 (Fed. Cir. 2001), "the deficiencies of the cited references cannot be remedied by . . . general conclusions about what is 'basic knowledge' or 'common sense' to one of ordinary skill in the art." Consequently, as in In re Zurko, "this assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support. . . With respect to core factual findings in a determination of patentability, . . . the Board cannot simply reach conclusions based on its own understanding or experience -- or on its assessment of what would be basic knowledge or common sense. Rather, the Board *must point to some concrete evidence in the record in support of these findings*." (Emphasis added) There is no evidence in the record to support that "it would have been obvious to have made Nosker's soda bottles green, motivated by the desire to reduce the amount of green soda materials that are incinerated or sent to a landfill," as set forth in the Office Action. This point is now significant because of Applicants' current claim amendment. Applicants thus respectfully request reconsideration.

Furthermore, Applicants respectfully submit that Nosker teaches using recycled materials of increased strength for utilization in high stress applications such as railroad ties (See Abstract). Its teachings and suggestions of possible materials is totally unrelated to erosion control blankets.

An erosion control blanket, as now claimed in claim 1 of the present application, allows growth of grass and other vegetation. It is respectfully submitted that one skilled in the art would not investigate or research lumber substitutes made of a high density material with increased strength, as described at col. 1, lines 11-46 of Nosker, for the purpose of fabricating an erosion blanket. In essence, there is no motivation to combine Romanek and Nosker. As such, Applicants respectfully submit that claim 1 is not rendered obvious by Romanek, Jacobsen, Molnar, and Nosker and request that the §103 rejection be withdrawn.

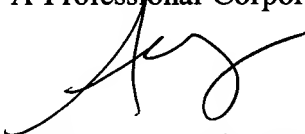
Claims 4-7 and 9 are either directly or indirectly dependent from claim 1 and should not be rendered obvious for at least the same reasons as stated above. Furthermore, with respect to dependent claims 4 and 5, these claims include the feature that "substantially post-consumer recycled polyester comprises post-consumer recycled polyethylene terephthalate (PET)." As stated in the Office Action, Romanek fails to teach that the polyester is substantially from recycled polyethylene terephthalate made of green soda bottle material. All references in Nosker to the use of PET materials are obscure at best and there is no motivation to combine these teaching as set forth above. Nosker teaches that "[curbside tailings are] composed of predominantly HDPE from bottles other than milk or water bottles, along with *a small percentage* of PVC, PET, PP, PS and other materials." (Emphasis added). As stated at col. 4, lines 7-9 of Nosker, "the polymer component includes between about 80 and about 100% HDPE." Therefore, PET may not be present in the polymer component at all, and at most would be present in small amounts. As such, the combination of Romanek, Jacobsen, Molnar, and Nosker does not teach or suggest "substantially post-consumer recycled polyester comprises post-consumer recycled polyethylene terephthalate (PET)." Applicants respectfully request that the §103 rejection of claims 4-7 and 9

be withdrawn.

In view of the foregoing, Applicant respectfully requests the thorough reconsideration of this application and earnestly solicits an early notice of allowance.

Respectfully submitted,

JENKENS & GILCHRIST,
A Professional Corporation

A handwritten signature in black ink, appearing to read 'Ashley N. (Farris) Moore', written over the printed name.

Ashley N. (Farris) Moore
Reg. No. 51,667

1445 Ross Avenue, Suite 3200
Dallas, Texas 75202-2799
(214) 965-7393
(214) 855-4300 (fax)